IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 21553 of 2004

AND

WRIT PETITION NO : 21566 of 2004

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WRIT PETITION NO : 21553 of 2004

Between:

1 The Union of India represented by Divisional Mechanical Engineer, East Coast Railway, Waltair, Visakhapatnam, Andhra Pradesh.
2 The Sr.Divisional Mechanical Engineer, East Coast Railway, Waltair, Visakhapatnam, Andhra Pradesh.
3 The Divisional Personnel Officer-1 East Coast Railway, Visakhapatnam, Andhra Pradesh.
4 The Divisional Railway Manager, East Coast Railway, Waltair, Visakhapatnam, Andhra Pradesh.
5 The Chief Mechanical Engineer, East Coast Railway, Bhubaneswar, (Orissa).
6 The General Manager, East Coast Railway, Bhubaneswar, Orissa.

..... PETITIONERS

AND

Sri R.Appala Narasimhulu, S/o R.Appalaswamy, Retired J.E-1

(C&W/CSL/VSKP), C/o S.Ramachandra Rao, D.No.38-37-31, Bhaskar Gardens, Marripalem, Visakhapatnam.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction particularly one in the nature of Writ of Certiorari in declaring the judgment dated 23-09-2004 in O.A.No.877/04 on the file of Central Administrative Tribunal of the Hyderabad Bench as bad, illegal, void and quash the same.

WRIT PETITION NO : 21566 of 2004

Between:

1 The Union of India represented by Divisional Mechanical Engineer, East Coast Railway Waltair, Visakhapatnam-4, Andhra Pradesh.
2 The Sr.Divisional Mechanical Engineer East Coast Railway, Waltair Visakhapatnam-4, Andhra Pradesh.
3 The Divisional Personnel Officer-I, East Coast Railway, Visakhapatnam-4, Andhra Pradesh.
4 The Divisioanl Railway Manager East Coast Railway, Waltair Visakhapatnam-4, Andhra Pradesh.
5 The Chief Mechanical Engineer East Coast Railway, Bhubaneswar (Orissa).
6 The General Manager East Coast Railway, Bhubaneswar, Orissa.

..... PETITIONERS

AND

Sri D.K.K.Deo, Retd.SSE/C&W/CSL,
D.No.38-37/4 Bhaskar Gardens,
Marripalem, Visakhapatnam-18.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction particularly one in the nature of writ of certiorari in declaring the Judgment dated 23.9.2004 in O.A.No.906/04 on the file of Central Administrative Tribunal of the Hyderabad Bench as bad, illegal, void and quash the same.

Counsel for the Petitioners: MR.R.S.MURTHY, S.C. for Railways (in both cases)

Counsel for the Respondent: MR.V.RAVINDRANATH REDDY (in both cases)

The Court made the following:

WRIT PETITION NOS.21553 and 21566 of 2004

COMMON ORAL ORDER: (By GB.J.)

Both the Writ Petitions can be disposed of by a common order.

2. The issue that is involved in these Writ Petitions is whether the DCRG and Leave Salary can be withheld in respect of a retired employee in the absence of a statement of charge being pending as on the date of his retirement.

3. The respondents in both these Writ Petitions were the railway employees and they were retired from service after attaining the age of superannuation. However, as on the date when they retired, no statement of charge was issued to them, and when their DCRG and leave salary were sought to be withheld, they filed OA.Nos.877 of 2004 and 906 of 2004 before the Central Administrative Tribunal (for short Tribunal). The learned Tribunal, after extracting Rule 9 of Railway Services (Pension) Rules, 1993 (for short the Rules), observed as follows:

> "In view of the above rule position, the DCRG can be withheld when the departmental enquiry has been instituted and is pending against the applicant. Admittedly, in the case in hand, no charge sheet has yet been issued against the applicant although the preliminary enquiry has been completed and enquiry report has been submitted. In fact, for the reasons best known to them, respondents have decided not to go for further investigation during his service tenure or after his retirement. That being the position, in terms of the above rule position, the respondents are not entitled to withhold the DCRG and the leave salary. Therefore, the impugned order is not sustainable and is hereby quashed and set aside. The respondents are directed to release the DCRG and leave salary along with interest @ 12% p.a. from the date of his entitlement till the date of actual payment. Respondents shall complete the above exercise within two months from the date of communication of this order".

Against the said order in both the OAs, the Railways filed the present Writ Petitions.

4. The learned Standing Counsel Mr.R.S.Murthy, appearing for the petitioners, vehemently contends that the respondents-employees have committed very grave and serious misconduct resulting in colossal of loss to the Railways and that a preliminary enquiry was in progress as on the date when they retired from service and therefore the Tribunal ought to have construed that the pending of preliminary enquiry itself as statement of charges, otherwise the very purpose of Rule 9 of the Rules will be frustrated if the property of the Railways is not protected by withholding the DCRG of the respondents herein. He further submits that the value of the wagons, which they have diverted, runs into crores of rupees. Under those circumstances the learned Standing Counsel would submit that the interpretation given by the Tribunal is wholly misconceived and the same is liable to be set aside.

5. Though the learned Standing Counsel tried to project the rule position to mean contrary to sub-rule (5) of Rule 9 of the Rules, we are unable to accept the same. Sub-Rule (5) of Rule 9 of the Rules is very specific on this aspect, which reads thus:

> "Departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the railway servant or pensioner, or if the railway servant has been placed under suspension from an earlier date, on such date".

Admittedly in the instant case, though no statement of charge has been issued to the employees while they were in service. The learned counsel would again submit that as the preliminary enquiry was pending, the formal statement of charge was not issued as the same has to be issued by the President of India, and it is not necessary that the charge sheet in fact should have been issued. We are unable to accept his contention. What is required to be ensured in order to successfully withhold the DCRG is that the departmental proceedings should have been initiated. The departmental proceedings have been explained to the effect that the statement of charge ought to have been issued to the railway servant as on the date of retirement, but admittedly in the instant cases, no such statement of charges were issued. Under those circumstances, it cannot be said that the order of the Tribunal is illegal and contrary to law.

6. Though the learned counsel submitted that the respondents herein have caused huge loss to the Railways and the same should be protected by withholding DCRG, we cannot accept his contention. When the law is very specific on that aspect, it cannot be interpreted in a different way so as to suit the needs of the Department.

7. Thus, we find there are no grounds to interfere with the order of the learned Tribunal and we also find no merits in these two Writ Petitions.

8. In the result, both the Writ Petitions are dismissed. No costs.

(G.BIKSHAPATHY, J.)

25th November, 2004.

(P.S.NARAYANA, J.)

SSR

To

1 The Divisional Mechanical Engineer,
East Coast Railway, Waltair, Visakhapatnam at Andhra Pradesh.
2 The Sr.Divisional Mechanical Engineer, East Coast Railway, Waltair,
Visakhapatna4, Andhra Pradesh.
3 The Divisional Personnel Officer-1 East Coast Railway, Visakhapatnam-3,

Andhra Pradesh.
4 The Divisional Railway Manager, East Coast Railway, Waltair,
Visakhapatna4, Andhra Pradesh.

5 The Chief Mechanical Engineer, East Coast Railway, Bhubaneswar, (Orissa).
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7 Sri R.Appala Narsimhulu, s/o. R.Appala Swamy, Retired JE-1, (C&W/CSL/VSKP), C/o. S.Ramachandra Rao, D.No.38-37-31, Bhaskar Gardens, Marripalem, Visakhapatnam-530018.

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